LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
NOV 15 1967
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 822

ALDRICH JEMISON,
Petitioner,

vs.

EARLINE B. BROWN, OCIE ALMA REEVES, OLLIE MAE REEVES and WILLIE PAYR,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

CHARLES S. CONLEY,
315 South Bainbridge Street
Montgomery, Alabama 36104
Attorney for Petitioner

ALABAMA PRINTERS, INC., MONTGOMERY, ALABAMA

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Constitution Provisions Inyolved	3
Statement	3
Reasons for granting the Writ	8
Conclusion	10
Appendix A Constitutional provisions Statutes and Rules	12
Appendix B Judgment of Alabama Supreme Court Final decree of Circuit Court of Dallas County, In Equity	14

TABLE OF AUTHORITIES

CASES

Alabama v. United States, 304 F. (2d) 583 (1962)	8
Bailey v. Alabama, 219 U.S. 219 (1910)	8
Baltimore & O. R. Co. v. U. S., 298 U. S. 349 (1936)	9
Ex Parte Virginia, 100 U. S. 339 (1880)	10
Ex rel. Seals v. Wiman (5th Cir.) 304 F. (2d) 53 (1962)	8

Garner v. Louisiana, 368 U. S. 157 (1961) 10

Henderson v. Mayor of New York, 92 U. S. 259 (1876) 10

Mooney v. Holohan, 294 U. S. 103 (1934) 10

Rogers v. Alabama, 192 U. S. 226 (1903) 10

Strauder v. West Virginia, 100 U. S. 303 (1879) .. 10

Thompson v. City of Louisville, 362 U. S. 199 (1960) 9, 10

Yick Wo v. Hopkins, 118 U.S. 356 (1886) 9

STATUTES AND RULES

CONSTITUTIONAL RROVISIONS,

Page

FOURTEENTH AMENDMENT 12

Code of Alabama, 1940,

Title 61, § 50 12

Code of Alabama, 1940 Equity Rule 55 (1) 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No.....

ALDRICH JEMISON,
Petitioner,

vs.

EARLINE B. BROWN, OCIE ALMA REEVES, OLLIE MAE REEVES and WILLIE PAYR,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

TO THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petitioner herein respectfully prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Alabama entered in the above-entitled case on August 17, 1967.

OPINIONS BELOW

The opinion of the Supreme Court of Alabama in **Jemison v. Brown,** et als., is reported at ..... Ala. ....., 202. So. (2d) 44 and is set forth in Appendix B, infra, pp ..... The Opinion of the Circuit Court of

Dallas County, Alabama is also printed in Appendix B, infra, pp. .....

JURISDICTION

The judgment of the Supreme Court of Alabama was entered on August 17, 1967. The Jurisdiction of this Court is based on 28 U.S. 28 U.S.C. § 1257 (3), petitioner having alleged below, and alleged herein the denial of due process, deprivation of rights, and immunities secured by the Constitution of the United States.

QUESTIONS PRESENTED

1. Were right of the Negro Petitioner herein to due process of law as guaranteed by the Fourteenth Amendment violated by the action of a special assigned judge, who did not hear any of the evidence as a basis of his decree, that petitioner was not the son of the deceased owner of property and that he had no interest in the property, and who further decided disputed questions of fact against the petitioner on the advice of the trial judge who recused himself without giving reason for his action after having formally heard all the evidence presented, and who refused to enter any order or judgment after the trial, and which action was affirmed by the Supreme Court of Alabama?

2. Were the rights of the Negro petitioner herein to due process as guaranteed by the Fourteenth Amendment violated by affirmance of a Judgment by the Supreme Court of Alabama, from the Circuit Court of Dallas County, in Equity, in which there are numerous and obvious factual errors in the appellate opinion claiming that necessary parties to the appeal were not parties to the appellate proceeding, when patently all of such persons were in fact named in the Notice of

Appeal filed, and the Assignment of Errors[1] submitted.

3. Were the rights of the Negro petitioner herein to due process of law as guaranteed by the Fourteenth Amendment violated by the trial judge who because of race perjudice entered a final decree cancelling certain quitclaim deeds on unsubstantial allegations of fraud because of his personal racial bias against petitioner, and Petitioner's Negro trial counsel?

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves Section I of the Fourteenth Amendment to the Constitution of the United States.

STATEMENT

Scott and Rachael Jemison were the joint owners in free simple of 640 acres of land[2] located in Dallas County, Alabama.

Rachael Jemison died intestate on or about July 24, 1948, and was survived by her husband and joint tenant, Scott Jemison, a son Aldrich Jemison and a daughter, deceased at the time of this action, but survived by three children. After Scott Jemison's death in 1959, his second wife Earline Jemison (referred to in this brief as Earline Brown) took possession of all funds on deposit in various Selma banks, all of the livestock,

---

1/ Attached to Certified Transcript of Record submitted.

2/ The Supreme Court of Alabama in an opinion by Judge Simpson, states that these were "some 440 acres of land owned by Scott Jemison and his wife." There are many and numerous errors of facts reflected in the opinion which the transcript of the trial proceedings reveal.

as well as all the 640 acres of land, upon which some twelve or fifteen tennant houses were located.

Earline Brown offered for probate a will which she claimed to be that of Scott Jemison, deceased. Several heirs or next of kin of Scott Jemison executed waivers to the probate of the will, except Aldrich Jemison, who was named a son and as a beneficiary in the will in question (T. 128, 133).

Notice as required by law[3] was never given to Aldrich Jemison, either actual or constructive, as reflected by the petition to probate the alleged will even though a specific bequest left certain property to the petitioner.

Earline Brown admitted that she took possession of all of the personal and real properties of Scott Jemison, or that which she assumed to be Scott's even though she was entitled only to his one-half undivided interest, assuming that the will was valid. (Tr. 133-135).

After the trial on May 25, 1965, Petitioner obtained quitclaim deeds from his two nieces and nephew, who were the children of his sister, Mary Reeves, deceased. Each deed was recorded and thereafter copies were attached as exhibits to a supplemental pleading (Tr. 4), filed by the Petitioner in order to show that the interest of all heirs had been consolidated. One of the nieces had already executed a quitclaim deed in favor of petitioner prior to the trial.

Earline Brown, realizing that she was not going to be able to acquire by adverse possession or otherwise the 320 acres of land which she had taken over after the death of Scott Jemison, made several trips

---

3/ Code of Alabama, 1940 Title 61, § 50.

to Birmingham, Alabama, and (Tr. 82, 88) wrote letters or had letters written by friends in addition to telephone calls (Tr. 144-115), and further got other persons to contact the intervenors. Earline Brown influenced intervenors to agree for Pitts & Pitts, Attorneys at Law of Selma, Alabama, to file an Intervenors Petition alleging improper conduct on the part of the petitioner as well as petitioner's counsel, even though petitioner had spent several thousand dollars preparing for trial, etc., in an effort to acquire the property on behalf of himself as well as his nieces and nephews, intervenors below.

Ollie Mae Reeves, one of the intervenors was the first to execute a deed to petitioner (Tr. 67-68). The intervenors later executed quitclaim deeds, including Ollie Mae Reeves for a second time, so as to give petitioner a free hand against the respondent, Earline Brown, who for years refused to share any part of Scott Jemison's estate with his heirs. Each of the so-called intervenors had stated again and again that they were unable to assist petitioner with expenses in an effort to procure the Selma property and agreed formally that Aldrich Jemison, their uncle, would carry forward the action against Earline Brown, for all concerned.

The trial record shows (Tr. 82, 88), that Earline Brown contacted and provided expense money for the intervenors to come to Selma and confer with Pitts & Pitts, Attorneys at Law, at which time a determination was made to file an intervenor's petition, which came after petitioner had expended time and expenses discovering the nature and extent of property available to petitioner and intervenors, including bringing them in touch with counsel who on several occasions had explained to them their rights, to one half of the property in question.

Both Willie Payr and Ollie Reeves had first agreed

that counsel should be employed and met Petitioner's counsel in his offices several months before Earline Brown took them to Pitts & Pitts in Selma, Alabama.

On April 2, 1965, petitioner filed a Bill of Complaint in the Circuit Court of Dallas County, Alabama, in Equity, and named as respondent, Earline B. Brown.

After a complete trial of the issues before the Hon. James A. Hare, Judge of the 4th Judicial Circuit on May 25, 1965, a supplemental petition for additional relief and intervention was duly filed on July 9, 1965, by petitioner pursuant to suggesting and permission granted by the Court after an oral motion for such permission at the end of the trial on May 25, 1965. Attached as exhibits were quitclaim deeds obtained before and well as after the trial on May 25, 1965, which consolidated the interest of parties who were not formally parties to the action.

From July 9, 1965, to October 8, 1965, the Judge Hare refused to enter an order, a final decree, or judgment on the evidence presented, as requested by counsel or to set the case for a hearing on the supplemenal petition for additional relief and intervention. On October 8, 1965, after conference with the Court in chamber in Selma, Alabama, petitioner's counsel was informed that a Bill of Intervention was filed by Pitts & Pitts, Attorneys at Law, Selma, Alabama, although none had been filed of record at the time of the conference.

A copy of a Petition for Leave to Intervene, dated October 8, 1965, was later sent to petitioner, in which Pitts & Pitts were seeking to have cancelled certain quit claim deeds previously filed for record by petitioner.

On November 9, 1965, Pitts & Pitts filed a notice

to take the deposition of Ocie Alma Reeves on November 18, 1965 at 2:00 p.m. in New York City, in the Law Offices of Gainsburg, Gootliev, Levitan & Cole. Ocie Alma Reeves is one of the intervenors who resided in Liberty, New York.

Petitioner moved to suppress the deposition on the ground that notice did not comply with the requirements of Equity Rule 55, (1), Code of Alabama, 1940.

An order was entered assigning Hon. Emmett F. Hildreth, as Special judge, to preside as Circuit Judge, in the trial of the case since Judge James A. Hare had recused himself without notice to petitioner or counsel for petitioner, over the subsequent objection of petitioner.

Hearing was set for December 22, 1965, at which time petitioner's motion for a change of venue, petitioner's motion to dismiss, as well as petitioner's motion to suppress deposition were denied, and to which exceptions were duty taken.

The Court granted all relief prayed for by intervenors on the testimony of two of the intervenors and the deposition of Ocie Alma Reeves, who was not a witness at the hearing on December 22, 1965.

Petitioner sought review of the judgment of the Circuit Court of Dallas County, Selma, Alabama, by the Supreme Court of Alabama, indicating 32 assignments of error, naming as appellees Earline Brown, against whom the original complaint was filed, as well as Ocie Alma Reeves, Ollie Mae Reeves and Willie Payr referred to as intervenors herein. The Alabama Supreme Court erroneously stated that none of the intervenors were named as parties to the appeal, although in appellent's notice of appeal, assignment of errors and in the appellant's brief all parties including the defendant in

the original complaint as well as the so-called three intervenors were named as appellees.

REASONS FOR GRANTING THE WRIT

These unique cases present serious and substantial issues raised in this petition involving the blantant denial of substantive and procedural due process of law in Alabama Courts in violation of the Fourteenth Amendment, and of fundamental importance is the fact that the Alabama Supreme Court has affirmed a defective and irregular order or decree entered by a bias trial judge in Selma, Alabama, under the guise of affirming an ordinary and routine appeal. **Bailey v. Alabama,** 219 U. S. 219. The Alabama Supreme Court through its sophisticated method of affirmance has again followed its usual procedural of ignoring the rights of a Negro citizen on assumed procedural irregularities.

In a judicial system where each court official throughout the entire state is white, it becomes necessary to examine the method of dispensing with fundemental rights of Negro Citizens in the field of civil as well as property rights. See **Alabama v. U. S.,** 304 F.2d 583, 5th Cir. aff'd ..... U. S. ..... ex rel **Seals v. Wiman** (5th Cir.) 304 F. (2d) 53, and particular is this necessitated where erroreous and unsupported rulings on basic constitutional questions are involved.

Without any evidence of petitioner's relationship to the deceased before it and by ignoring all this court's established law concerning due process and well as its own laws, the Supreme Court of Aalbama has violated the most fundamental property right that the petitioner has by taking away his property in violation of the guarantees of the Fourteenth Amendment. The right under the due process clause to a full and complete hearing includes the right to introduce evidence and have judicial findings based upon it, and by a trial judge

who heard the evidence. **Baltimore & O. O. R. Co. v. U. S.** 298 U.S. 349.

If this case stands unreviewed and unreversed, not only will the struggle of Negro citizens toward the protection of civil and property rights be inpeded, but Alabama will have been given permission to place a curtain of silence over improper and violative judgments and orders of its trial and appellate judges, in situations where the record is totally devoid of evidentiary support all in violation of the due process clause of the Fourteenth Amendment. **Thompson v. City of Louisville,** et al., 362 U. S. 199.

The Alabama Supreme Court's affirmance of the decree in the trial court was based on the fact that so-called intervenors were not included as parties to the appeal. The intervenors according to the Alabama Supreme Court were indispensably necessary as formal parties appellees. Petitioner not only included the names of said parties in the notice of appeal, assignmnt of errors filed in the Alabama Supreme Court but various motions filed by opposing counsel referring to intervenors as parties to the appeal.

As stated above, the Supreme Court of Alabama seeks to resort to absurd procedural technicalities as a basis of ignoring rights of the petitioner to due process in the courts of the State of Alabama. Because petitioner is a Negro and was represented by Negro trial counsel, he has been and is unable to obtain in Dallas County a fair determination of rights protected by the Fourteenth Amendment to the Constitution of the United States.

As this Court said in **Yick Wo. v. Hopkins,** 118 U.S. 356 (1886):

"Though the law itself be fair on its face, and

> impartial in appliance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution . . . "

The Constitution prohibits discrimination by States as announced in **Ex Parte Virginia,** 100 U. S. 339; **Strauder v. West Virginia,** 100 U.S. 303 (1879), to **Garner v. Louisiana,** 368 U.S. 157 (1961), and **Thompson v. City of Louisville,** et al., 362 U.S. 199. The law is clear that such discrimination based on color is equally repugnant whether it takes the form of legislation or unequal administration of the law by public authority, including state trial and appellate courts. **Henderson v. Mayor of New York,** 92 U. S. 259; and **Mooney v. Holohan,** 294 U. S. 103, at page 113. As this Court said in **Rogers v. Alabama,** 192 U.S. 226, at page 230:

> "It is a necessary and well settled rule that the exercise of jurisdiction by this Court to protect Constitutional right cannot be declined when it is plain that the fair result of a decision is to deny the right."

CONCLUSION

For the foregoing reasons, this petition for Writ of Certiorari should be granted.

Respectfully submitted,

CHARLES S. CONLEY
315 South Bainbridge Street
Montgomery, Alabama 36104

Attorney for Petitioner

APPENDIX A

Constitutional and Statutory Provisions Involved

CONSTITUTION OF THE UNITED STATES AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

.... CODE OF ALABAMA, 1940, Title 7

Alabama Equity Rules, Rule 55(1). Rules for taking the oral examination of witnesses in equity cases before commissioners.

(1) Every notice required to be given under the following sub-rules must be given in writing by the party desiring it to the adverse party, or to his attorney of record, if either resides in the county; but if neither resides therein, the notice, unless waived, shall be filed in writing with the registar and he shall give the required notice to the adverse party, or his attorney of record by mail, postage prepaid, directed to his place of residence; and the certificate of the register is prima facie evidence of the mailing of such notice.

CODE OF ALABAMA, 1940, Title 61.

§50. **Notice by publication.** If either the widow or next of kin reside and are without the state, notice of

such application must be given by publication once a week for three successive weeks in a newspaper published in the county in which such application is made, and if no paper is published therein, by posting of the same at the courthouse three weeks before such application is heard. In lien of notice herein provided, notice may be had on such persons, by registered mail, as provided by equity rules.

APPENDIX B

THE STATE OF ALABAMA
JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

SPECIAL TERM, 1967

2 Div. 492

Aldrich Jemison
v.
Earline B. Brown

Appeal from Dallas Circuit Court, in Equity
SIMPSON, JUSTICE.

The litigation in this case involves real property located in Dallas County. The facts appear to be substantially the following:

Some 440 acres of land was owned by Scott Jemison and his wife Rachel Jemison in 1918, as joint tennants. Rachel died intestate in 1948. Appellant claims to have been her son. The trial court found that this was not the case, and that rather Rachel was survived by the only child she ever bore, Mary Reeves. Mary Reeves died in 1964, leaving surviving three children, Ollie Mae Reeves, Ocie Alma Reeves, and Willie Payr.

After Rachel died, Scott Jemison married Earline B. Brown. Scott died in 1959 and left a will wherein he devised his one-half undivided interest in the real estate to his widow, Earline B. Brown, the appellee.

The litigation commenced when Aldrich Jemison, the appellant, instituted a bill for sale and division of the land in Dallas County, naming as respondent Earline B. Brown. The basis of his claim was that he was

the son of Rachel Jemison who died intestate in 1948. A trial on this issue was held and it was determined that Aldrich Jemison was not the son of Rachel and hence had no interest in the property. Subsequently, and apparently while the case was still pending, Aldrich filed an amended bill in which he asked for the same relief, but this time claimed that his interest in the property was based upon quitclaim deeds from the children of Mary Reeves, whom the court had found to be the only child of Rachel Jemison.

These children, Ollie Mae, Ocie Alma, and Willie petitioned the court for leave to intervene, which was granted, and asked that the quitclaim deeds relied upon by appellant be set aside as null and void, having been procured by fraud, not having been based upon valuable consideration, etc.

Evidence was taken on this aspect of the case and the court rendered a decree in favor of the intervenors and ordered that the quitclaim deeds be set aside. Without elaborating further, suffice it so say that there is evidence to support his decree.

Appellant has now applied to this court in the following manner: He names as appellee, only Earline B. Brown, the original respondent in the bill for division. The intervenors are not named; hence, we are not called upon to consider any part of the decree relating to the petition for intervention, although the 32 assignments of error made in the case relate almost exclusively to that aspect of the case. It is academic that all parties to an action whose interest will be affected by a reversal of the judgment or decree appealed from must be made parties to the appellate proceedings. Otherwise we cannot consider the case as to the non-joined appellees. **Clark v. Knox,** 65 Ala. 401.

In the bill for division aspects of the case, the court

found that the appellant had no interest in the property in that he was not the son of Rachel Jemison. There is abundant evidence to support this conclusion. In the amended aspect, the appellant claims that interest through the quitclaim deeds received from the children of Mary Reeves, whom the court found to be the only child of Rachel. On sufficient evidence the court set aside and held for naught these deeds. We cannot reverse on that basis.

Appellant argues that error was committed in setting aside the quitclaim deeds. We have read the testimony adduced on this aspect of the case. We are abundantly convinced that the court correctly decreed that there was fraud in the procurement of the deeds and that there was insufficient or no consideration to support them.

Further, a great deal of the appellant's brief is directed toward the involvement of the intervenors in the case, claiming that appellant's attorney should have been permitted to represent their interest as well as that of appellant. We are not clear as to the exact mannr in which the court is supported to have erred in this regard. The record discloses no ruling in this respect and it is apparent at a glance that the interest of the intervenors and that of the appellant were diverse. Some argument is made that the trial court erred in allowing the first judge to rescue himself. However, nothing in the record indicates that the appellant voiced any objection to this action at the time it was taken.

We have reviewed the record and no reversible error has been pointed out in brief.

AFFIRMED.

Livingston, C. J., Merrill and Hardwood, JJ., concur.

I, J. O. Sentell, Deputy Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said Court.

Witness my hand this 17 day of August, 1967.

s/J. O. Sentell

Deputy Clerk Supreme Court of Alabama

IN THE CIRCUIT COURT OF DALLAS COUNTY, ALABAMA, IN EQUITY.

CASE NO. 8315

ALDRICH JEMISON,
Complainant,

vs.

EARLINE B. BROWN,
Respondent.

AND ..
OCIE ALMA REEVES, OLLIE MAE REEVES, and WILLIE PAYR,
Intervenors.

FINAL DECREE

This cause was submitted to the Court for final decree on the original Bill of Complaint, the Answer of the Respondent, the Bill of Intervention, on the behalf of the Intervenors, the testimony of the witnesses taken orally before the Court in open Court and the

deposition of Ocie Alma Reeves, which is the Intervenors' Exhibit 5, the exhibits of the Complainant, Respondent, and Intervenors and by agreement between Counsel for Complainant, Counsel for Respondent and Counsel for Intervenors, all of the testimony heretofore taken before the Honorable James A. Hare, and the entire record in said cause.

The Court having heard the testimony orally and considered and understood the same, is of the opinion that the Intervenors are entitled to all of the relief prayed for in their said Bill of Intervention.

THE COURT FINDS FROM THE EVIDENCE that title to said property was vested in Scott Jemison and Rachel Jemison as joint tenants by virture of a deed from Sara Blockett and J. C. Adler, which said deed was duly recorded in the Probate Office of Dallas County, Alabama; that Rachel Jemison died intestate in Dallas County, Alabama, on, to-wit: July 24, 1948 and was survived by her husband Scott Jemison and her only child, namely, viz: Mary Reeves; that Mary Reeves died intestate on or about, to wit: May, 7 1964 leaving surviving her as her only heirs at law and next of kin, her three children, namely, viz: Ollie Mae Reeves, Ocie Alma Reeves, and Willie Payr, who are the Intervenors and who are the grandchildren of Rachel Jemison, deceased.

That Scott Jemison, after the death of Rachel Jemison, was married to Earline B. Jemison, who is one and the same person as the Respondent, Earline B. Brown; that Scott Jemison died on or about, to-wit: April 24, 1959, and left a Will wherein and whereby there was devised his one-half (1/2) undivided interest in the real estate described in the Bill of Complaint and Bill of Intervention to his widow, Earline B. Jemison; that Earline B. Jemison subsequently remarried one Frank Brown and she is now known as Earline B. Brown and

is the Respondent; The Court further finds that the Complainant, Aldrich Jemison, was not the son of Rachel Jemison, deceased, as alleged in the Bill of Complaint, and is not entitled and was not entitled to inherit said lands which are described in the Bill of Complaint and the Bill of Intervention or any interest therein from the said Rachel Jemison, deceased; that the Complainant, Aldrich Jemison, has no right, title, claim or interest in said real estate.

THE COURT FURTHER FINDS FROM THE EVIDENCE, that the Intervenor, Ocie Alma Reeves, executed a quitclaim deed to the Complainant, Aldrich Jemison, wherein she conveyed all of her rights, title and interest which she might have had to the property described in the Bill of Complaint and the Bill of Intervention; said quitclaim deed was executed on, to-wit: June 7, 1965, was filed for record on June 11, 1965, in Record Book 574 at Page 361 in the Probate Office of Dallas County, Alabama; that the Intervenor, Ollie Mae Reeves executed a quitclaim deed to the Complainant, Aldrich Jemison, wherein she conveyed all of her rights, title, and interest which she had to the property described in the Bill of Complaint and Bill of Intervention; said quitclaim deed was executed on, to-wit: May 16, 1964, and was filed for record on April 5, 1965, in Record Book 571 at Page 251 in the Probate Office of Dallas County, Alabama; that the Intervenor Ollie Mae Reeves executed another quitclaim deed along with the Intervenor Willie Payr wherein they conveyed to Aldrich Jemison all of their right, title and interest to the property described in the Bill of Complaint and the Bill of Intervention, which said deed was filed for record on May 31, 1965, and recorded in Record Book 574 at Page 239 in the Probate Office of Dallas County, Alabama;

At the time each of the said quitclaim deeds were executed by the Intervenors, they did not receive any

adequate consideration; that on December 1, 1965, the Complainant's attorney, Charles S. Conley, after he had notice that the Intervenors Ollie Mae Reeves, Ocie Alma Reeves, and Willie Payr were being represented by the firm of Pitts & Pitts, went to Birmingham, Alabama and paid to the Intervenor Ollie Mae Reeves the sum of TWO THOUSAND AND NO/100 DOLLARS ($2,00.00) and paid to the Intervenor Willie Payr the sum of ONE THOUSAND, FIVE HUNDRED AND NO/100 DOLLARS ($1,500.00); that the consideration which was paid to the Intervenor Ollie Mae Reeves and the Intervenor Willie Payr on December 1, 1965, if it was in fact paid, was so grossly inadequate as to shock the conscious of this Court.

THE COURT FURTHER FINDS FROM THE EVIDENCE that at the time of the payment of said sums the said Charles S. Conley did obtain from the Intervenor Ollie Mae Reeves an affidavid or written instrument which is Complainant's Exhibit "A" and Intervenor's Exhibit "6" and did obtain from the Intervenor Willie Payr an affidavit or written instrument which is the Complainant's Exhibit "C" and the Intervenor's Exhibit "7"; although at the time of obtaining said instruments the said Charles S. Conley had full knowledge that the said Intervenors were then represented by Pitts & Pitts of Selma, Alabama.

THE COURT FURTHER FINDS FROM THE EVIDENCE that the property described in the said Bill of Complaint and the Bill of Intervention has the approximate value of THIRTY THOUSAND AND NO/100 DOLLARS ($30,000.00); that the Intervenors are individuals of a very limited education and at the time they executed the hereinabove described quitclaim deeds, they did not have any knowledge of their interest in and to said real estate which is located in Dallas County, Alabama; that the said real estate which is located in Dallas County, Alabama; that the said quit-

claim deeds which were executed by the Intervenors were procured by fraud, undue influence and misrepresentation or concealment of material by the Complainant and his attorney, Charles S. Conley.

THE COURT IS THEREFORE OF THE OPINION FROM THE EVIDENCE PRESENTED that the Intervenors are entitled to all of their relief as prayed for in their said Bill of Intervention and the Complainant is not entitled to any of the relief prayed for in his said Bill of Complaint.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT AS FOLLOWS:

1. The Complainant is not entitled to the relief as prayed for in this Bill of Complaint and the relief so pray for is hereby denied.

2. The Intervenors are entitled to all of the relief prayed for in their said Bill of Intervention.

3. That the real estate described in the Bill of Complaint and the Bill of Intervention is held or owned jointly or in common by the Respondent, Earline B. Brown, who is the owner of an undivided on-half (½) interest in the said real estate and by the Intervenors Ollie Mae Reeves, Ocie Alma Reevs, and Willie Payr, who each own an undivided one-sixth (1/6) interest in said real estate.

4. That the said quitclaim deed executed by the Intervenor Ollie Mae Reeves to the Complainant, Aldrich Jemison, which said deed was filed for record on April 5, 1965, in Record Book 571 at Page 251 in the Probate Office of Dallas County, Alabama, is hereby set aside, cancelled, and declared to be null and void and of no force and effect; that the said quitclaim deed

which was executed by the Intervenors Ollie Mae Reeves and Willie Payr to the Complainant, Aldrich Jemison, which was filed for record on May 31, 1965, in Record Book 574 at Page 239, in the Probate Office of Dallas County, Alabama, is hereby set aside, cancelled, and declared to be null and void and of no force and effect; that the said quitclaim deed which was executed by the Intervenor Ocie Alma Reeves to the Complainant, Aldrich Jemison, which said deed was filed for record on June 11, 1965, and recorded in Record Book 574 at Page 361, in the Probate Office of Dallas County, Alabama, is hereby set aside, cancelled and declared to be null and void and of no force and effect; that the Intervenors Ollie Mae Reeves, and Willie Payr are hereby ordered to pay to the Circuit Court of Dallas County, Alabama the sum of TWO THOUSAND AND NO/100 DOLLARS ($2,000.00) and ONE THOUSAND, FIVE HUNDRED AND NO/100 DOLLARS ($1,500.00) respectively, which sums of money the Intervenors received from the Complainant's attorney, Charles S. Conley, on December 1, 1965.

5. That all of the right, title and interest in and to the following described property, situate, lying and being in Dallas County, Alabama, to-wit:

> The East half of the West half of the southeast quarter and the East half of the Southeast quarter of Section 16, and the West half of the Southwest quarter of Section 15, all in Township 16, Range 12, containing 200 acres more or less; also, the Northwest quarter, the Southwest quarter and the West half of the Northeast quarter, and the West half of the West half of the Southeast quarter, all of Section 16, Township 16, Range 12, containing about 440 acres, more or less.

which said real estate was purported to be conveyed

to the Complainant, Aldrich Jemison, by the hereinabove described quitclaim deeds, be and the same is hereby divested out of the said Aldrich Jemison and hereby restored or vested in the Intervenors Ocie Alma Reeves, Ollie Mae Reeves, and Willie Payr, in fee simple.

6. That the Register of this Court record a copy of this decree in the Probate Office of Dallas County, Alabama, and the costs thereof be taxed as part of the costs in this property; that the Register of the Court endorse on the margin of the records of the Probate Office of Dallas County, Alabama, where each of the said quitclaim deeds appear, the words "deed declared void by decree of Circuit Court of Dallas County, Alabama, in Equity, Case No. 8315" and affix her name thereon as Register.

7. That the costs of Court, to be ascertained and fixed by the Register, is taxed against the Complainant, Aldrich Jemison, for which let execution be issued.

DONE this the 22nd day of December, A. D., 1965.

s/E [illegible]. Hildreth
Judge of the Circuit Court Of Dallas County, Alabama In Equity.

STATE OF ALABAMA

COUNTY OF DALLAS

I, Marguerite H. Houston, Register of the Circuit Court of Dallas County, Alabama, do hereby certify that the foregoing is a true and correct copy of the Final Decree entered in said cause on the 22nd day of

December, A. D., 1965, as the same appears on file in this Court.

GIVEN UNDER MY HAND AND SEAL on this the 23rd day of December, A. D., 1965.

s/Marguerite H. Houston
Register of Circuit Court of Dallas County, Ala.

LIBRARY
SUPREME COURT, U. S.

FILED
DEC 12 1967
JOHN F. DAVIS, CLERK

IN THE
SUPREME COURT OF THE
UNITED STATES
October Term

No. 822

ALDRICH JEMISON,

Petitioner,

versus

EARLINE B. BROWN, OCIE ALMA REEVES, OLLIE MAE REEVES, and WILLIE PAYR,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF FOR THE RESPONDENTS OCIE ALMA REEVES, OLLIE MAE REEVES AND WILLIE PAYR IN OPPOSITION.

W. McLean Pitts
Pitts and Pitts
Attorneys at Law
Selma, Alabama
Attorneys for Respondents
Ocie Alma Reeves,
Ollie Mae Reeves and
Willie Payr.

SUBJECT INDEX

	Page
OPINION BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	3
STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED	4
STATEMENT	4
ARGUMENT	12
CONCLUSION	19
CERTIFICATE OF SERVICE	20
APPENDIX	21

TABLE OF CASES CITED

Ala. Chemical Co. v. *Hall* 101 So. 456, 212 Ala. 8	16
Application of Baer, 169 F 2d 770	14
Bennich v. *Stewart* 34 Ala App 61, 36 So. 599	16
Clark v. *Knox* 65 Ala 401	19
Congress of Industrial Organizations v. *McAdory*, 65 S. Ct. 1395, 325 U. S. 472 89 L. Ed. 1741	16
Deloach v. *Rogers*, 268 F 2d 928	14
Department of Mental Hygiene of Cal. v. *Kirchner* 85 S. Ct. 871, 380 U. S. 194, 13 L. Ed 753	14
Edelman v. *People of State of Cal.* 73 S. Ct. 293, 344 U. S. 357, 97 L. Ed 387	14
Globe and Rudgers Fire Insurance Co. v. *Jones* 106, So. 172, 213 Ala 656	16
Hulbert v. *City of Chicago* 202 U. S. 275, 26 S. Ct. 617 50 L. Ed 1206	14, 15

Louisville R. R. Co. v. *Woodford, Ky,* 234 U. S. 46, 34 S. Ct. 739, 58 L. Ed. 1202 ..... 14, 15

Lynch v. *New York,* 293 U. S. 54, 55 S. Ct. 17 ..... 14, 15

Mutual Life Insurance Co. v. *McGrew* 188 U. S. 291, 23 S. Ct. 375, 47 L. Ed 480 ..... 14, 15

Mallers v. *Commercial Loan Co.* 216 U. S. 613, 30 S. Ct. 438, 54 L. Ed 638 14

Myrick v. *Carter* 20 Ala. App 616, 104 So. 599 17

Provident Life and Accident Insurance Co. v. *Priest* 212 Ala. 576, 103 So. 678 16

Snellings v. *Jones* 33 Ala. App 301, 33 So. 2d 371, certiorari denied 250 Ala. 89, 33 So. 2d 373 16

Taylor v. *Taylor* 351 Ala. 374, 37 So. 2d 645 16

William E. Harden, Inc. v. *Harden,* 29 Ala. App 411, 197 So. 94 16

STATUTES AND CONSTITUTIONAL PROVISIONS

Title 28 U. S. C. 1257 (3) 2, 3, 19, 21

Code of Alabama 1940—Rule 1, Rules of Supreme Court of Alabama 17, 21

Code of Alabama 1940 (as last amended) Title 7, Section 474 (19) 18, 22

Code of Alabama 1940, Title 7, Section 801 ..... 19, 22

IN THE
SUPREME COURT OF THE
UNITED STATES
October Term

No. 822

ALDRICH JEMISON,

Petitioner,

versus

EARLINE B. BROWN, OCIE ALMA REEVES,
OLLIE MAE REEVES, and WILLIE PAYR,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ALABAMA

BRIEF FOR THE RESPONDENTS
OCIE ALMA REEVES, OLLIE MAE REEVES
AND WILLIE PAYR IN OPPOSITION.

OPINION BELOW

The opinion of the Supreme Court of Alabama in *Jemison* v. *Brown* is reported in Ala. , 202 So. 2d 44 and is set forth in detail in Appendix B of Petitioner's Brief. The judgment of the Circuit Court of Dallas County, Alabama, in Equity, was entered on December 22nd, 1965 and is also found in Appendix B of the Petitioner's Brief.

JURISDICTION

The Respondents, Ocie Alma Reeves, Ollie Mae Reeves and Willie Payr deny that this Honorable Court has jurisdiction under 28 U. S. C. 1257 (3) because:

1. A Constitutional question which has been brought to the attention of this Honorable Court was not properly raised at the Trial Court level nor in the Supreme Court of the State of Alabama.

2. For it does not appear affirmatively from the record that a Federal question was presented for decision to the Supreme Court of Alabama and that the Federal question presented was necessary to the determination of the cause.

3. For that it does not affirmatively appear from the record that a Federal question was actually decided by the Supreme Court of Alabama or that the judgment or opinion of the Supreme Court of Alabama as rendered could not have been given without deciding a Federal question.

4. For that it affirmatively appears from the transcript of evidence that no Federal question was ever presented for decision to the Supreme Court of Alabama, nor that the basis of the decision of the Supreme Court of Alabama turned on a Federal question. The transcript of evidence clearly shows that the Supreme Court of Alabama based its entire decision upon the Statutes and Laws of the State of Alabama.

5. For that it does not affirmatively appear that the decision of the Supreme Court of Alabama turned on any Federal question or Constitutional right guaranteed to the Petitioner as this question was never pre-

sented to the Supreme Court of Alabama nor to the Trial Court.

6. The Respondents Ocie Alma Reeves, Ollie Mae Reeves and Willie Payr were not made parties to the Appeal in this case from the Circuit Court of Dallas County, Alabama, in Equity to the Supreme Court of Alabama and time for Appeal has expired.

QUESTIONS PRESENTED

As to the Respondents Ocie Alma Reeves, Ollie Mae Reeves and Willie Payr, the only questions presented are as follows:

1. Should this Court take jurisdiction under Title 28, U. S. C. 1257 (3) when the alleged denial of due process (personal racial bias of Trial Judge) as secured by the Constitution of the United States was not properly presented to the Trial Court nor to the Supreme Court of Alabama?

2. Whether or not this Honorable Court should take jurisdiction in this matter when it affirmatively shows that the Constitutional question involved was not raised at the Trial Court level nor presented to the Supreme Court of Alabama for decision?

3. Should this Court take jurisdiction of this cause when the Supreme Court of Alabama did not actually decide a Federal question and the judgment of the Supreme Court of Alabama as rendered was properly given without deciding a Federal question?

4. Whether or not there was a violation of any Constitutional rights of the Petitioner by the failure of the Petitioner's own Trial Counsel in failing to

properly make the above named Respondents parties to the Appeal to the Supreme Court of Alabama?

5. Whether or not there is any material fact shown in the transcript of evidence which shows that the Trial Judge rendered his decision on an unsubstantial allegation of fraud because of his personal racial bias against Petitioner and Petitioner's Negro Trial Counsel?

STATUTES AND REGULATIONS INVOLVED

The aplicable statutes and regulations are provided in the Appendix, infra p.

STATEMENT

There are many inaccuracies found in "Petitioner's Statement" and it is for this reason that the Respondents, Ocie Alma Reeves, Ollie Mae Reeves and Willie Payr make the following statement of the case:

On April 2, 1965, the Petitioner filed a Bill of Complaint against the Respondent Earline B. Brown, in the Circuit Court of Dallas County, Alabama, in Equity. (R 2-3) In the Petitioner's Bill of Complaint it prayed for a sale and division of certain property which is located in Dallas County, Alabama. It alleged that the Petitioner, Aldrich Jemison, and the Respondent, Earline B. Brown, were joint tenants of this property and each owned a one-half undivided interest in the same. It further alleged that the Petitioner Aldrich Jemison derived his title from his mother Rachel Jemison who was a joint tenant with her husband, Scott Jemison. Rachel Jemison died intestate on or about

July 24, 1948 and was survived by her son Aldrich Jemison and her husband Scott Jemison. The Respondent Earline B. Brown then married Scott Jemison and derived her one-half interest in the property by the Last Will and Testament of Scott Jemison. The Complaint further alleged that the property could not be equitably divided or partitioned and prayed that the Court enter an order selling the same. (R 2-3)

On April 19, 1965, the Respondent Earline B. Brown, through her attorney, Mr. T. G. Gayle of Selma, Alabama, filed an answer to the Bill of Complaint denying each and every allegation of the Bill of Complaint which was previously filed and further stated that the Petitioner, Aldrich Jemison was not the son of Rachel and Scott Jemison and that he therefore did not have any interest in the said real estate. (R 3-4)

On May 25, 1965, a hearing on the petition for sale and division was filed in the Circuit Court of Dallas County, Alabama, before the Honorable Judge James A. Hare, Judge of the Circuit Court of Dallas County, Alabama. (R 119-157) At said hearing, it was brought out by the evidence that Aldrich Jemison was not the son of Rachel Jemison as alleged in the Petitioner's Bill of Complaint and that the said Rachel Jemison left surviving her husband, Scott Jemison and her only child, one Mary Reeves. That Mary Reeves died intestate on or about, to-wit: May 7, 1964 and left surviving her, three children, Ocie Alma Reeves, Ollie Mae Reeves and Willie Payr, who were the grandchildren of Rachel Jemison, deceased. (R 16; 118-157) At the conclusion of the hearing before the Honorable Judge James A. Hare, the attorney for the

Petitioner stated that he would like to amend the Complaint to include the heirs of Mary Reeves, deceased. (R 156)

On July 9, 1965, the Petitioner filed a supplemental petition for additional relief and intervention, wherein he set forth that at the hearing which was held before Honorable James A. Hare, it was determined that the heirs at law of Rachel Jemison, deceased, were the three children of Mary Reeves, deceased, namely, viz: Ocie Alma Reeves, Ollie Mae Reeves and Willie Payr, and further stated that Aldrich Jemison was not the son of Rachel Jemison. He further set forth that the interests of Ocie Alma Reeves, Ollie Mae Reeves and Willie Payr had been conveyed by Quitclaim Deeds to the Petitioner Aldrich Jemison and attached copies of said Quitclaim Deeds. (R 4, 5; 34, 67, 71)

He further stated in said petition that Aldrich Jemison should be allowed to intervene on the behalf of the rights of Ocie Alma Reeves, Ollie Mae Reeves and Willie Payr and that their interests in the real estate should be vested in him. (R 5)

On October 8, 1965, the Respondents Ocie Alma Reeves, Ollie Mae Reeves and Willie Payr, by and through their attorney of record Philip Henry Pitts, filed a petition for leave to intervene in the cause of action and filed a Bill of Intervention. (R 6) In said Bill of Intervention, it set forth the fact that the Petitioner did not have any interests in the real estate in question and that the Intervenors had derived their title to said real estate from their mother Mary Reeves, deceased, who was the daughter and only child of one Rachel Jemison, deceased; it further set forth that at

the time that Rachel Jemison died intestate, and at the time of her death she was a joint tenant with one, Scott Jemison and that her interests in the property upon her death went to her only child, Mary Reeves, deceased, who was the mother of your Intervenors. Said Bill of Intervention further set forth that the Intervenors had executed certain Quitclaim Deeds to the Petitioner, Aldrich Jemison wherein they conveyed their interests in said property to him. Said Bill of Intervention further alleged that at the time of the execution of said Deeds they did not have any knowledge of their interests in the hereinabove described real estate, nor did they have any knowledge of the proceedings which were pending before the Circuit Court of Dallas County, Alabama, which were brought by the Petitioner Aldrich Jemison against the Respondent, Earline B. Brown. It was also alleged that said Petitioners were persons of a very limited education, had no business experience whatsoever, and were not capable of taking care of themselves in an ordinary business transaction and that said Quitclaim Deeds were procured by the Petitioner Aldrich Jemison and his attorney, Charles S. Conley by fraud or undue influence. Said petition further alleged that said Deeds were executed upon representations which were false and which representations were conferred to the Intervenors by the Petitioner and his attorney. It further set forth that the Petitioner and his attorney knew that said lands were valued at approximately, to-wit: Twenty-two Thousand Dollars ($22,000.00), but yet the Respondents did not receive any consideration for executing said Deeds. Said Bill of Intervention prayed that the Bill be taken in the nature of a Cross-Bill and

that the Petitioner be made a Cross-Respondent and that the Court enter an order or decree holding that the Deeds executed by the Intervenors be declared null and void. (R 6-9)

On October 8, 1965, notice was given by Judge James A. Hare of the Circuit Court of Dallas County, Alabama, to the said Aldrich Jemison that a Bill of Intervention had been filed. (R 10)

Subsequent thereto a motion to dismiss the Bill of Intervention was filed on the behalf of the Petitioner Aldrich Jemison. (R 10-11)

Also, a motion for a change of venue was filed by the Petitioner wherein it was alleged among other things that the Petitioner was of the belief that it was not possible to obtain a fair and impartial hearing on the merits of the case in the Circuit Court of Dallas County, Alabama. (R 12)

Thereafter, Judge James A. Hare of the Circuit Court of Dallas County, Alabama recused himself from said case and Honorable Emmett F. Hildreth was appointed by the Honorable J. Ed. Livingston, Chief Justice of the Supreme Court of the State of Alabama, which said appointment was on November 5th, 1965. (R 12-13)

On December 22, 1965, a hearing on the Petitioner's Bill of Intervention was held in the Circuit Court of Dallas County, Alabama before the Honorable Emmett F. Hildreth. (R 21-118) At that time, the Petitioner's motion to dismiss was argued orally before the Court and the same was overruled. (R 15; 25-27) At that time, before a hearing on the merits was considered, an oral motion was made by the attorney

who was representing the Intervenors under Title 46 Section 43 of the 1940 Code of Alabama (Recompiled 1958) which said motion was made for the purpose of having the attorney for the Petitioner show under what authority he was purporting to represent the Intervenors. (R 8) A hearing was held on said motion. (R 28-52) and the Court held that the firm of Pitts and Pitts had been employd by the Intervenors and that the said Intervenors had not employed the said Charles S. Conley, who is also the attorney for the Petitioner Aldrich Jemison. (R 15; 52) Said Court also further found that the Petitioner's attorney Charles S. Conley could not have represented the Intervenors as the interest between the Petitioner Aldrich Jemison and the Respondents Ocie Alma Reeves, Ollie Mae Reeves and Willie Payr was in direct conflict. (R 15)

The attorney for the Petitioner Aldrich Jemison had also filed a motion for change of venue (R 12) and after a hearing was held on said motion, the Court overruled the same. (R 57-59)

At the conclusion of the evidence presented to Judge Emmett F. Hildreth, it was agreed by the attorneys representing the respective parties that the evidence which had been presented to Judge James A. Hare, at the hearing on the sale for division was considered part of the evidence and that the said Judge Emmett F. Hildreth would rule both on the original Bill of Complaint and the Bill of Intervention.

The Court then entered its final decree whereby it held that the Quitclaim Deeds which were executed by the Intervenors, Ocie Alma Reeves, Ollie Mae Reeves

and Willie Payr were procured by fraud, undue influence and misrepresentation or concealment of material facts by the Petitioner, Aldrich Jemison and his attorney, Charles S. Conley and at the time that said Quitclaim Deeds were executed that the Intervenors did not receive any adequate consideration. The Court further found that the Petitioner's attorney, Charles S. Conley, on December 1, 1965, which was after he had received notice that the Intervenors were being represented by the firm of Pitts and Pitts, had gone to Birmingham, Alabama and had paid to the Intervenors, Ollie Mae Reeves and Willie Payr, the sums of Two Thousand and No/100 ($2,000.00) Dollars and Fifteen Hundred and No/100 ($1500.00) Dollars, respectively. It was further cited in said final decree, if the above sums were in fact paid, that the consideration would be so grossly inadequate as to shock the conscience of the Court and ordered the Respondents to pay the said sums to the Circuit Court of Dallas County, Alabama. The Court further ordered that the interest of the Petitioner Aldrich Jemison, in the real estate in question which was vested in him by virtue of the Quitclaim Deeds was to be divested out of the Petitioner Aldrich Jemison, and invested in the Respondents, Ocie Alma Reeves, Ollie Mae Reeves and Willie Payr. The Court further found that the Petitioner, Aldrich Jemison was not the son of Rachel Jemison, deceased, as alleged in the original Bill of Complaint and was not entitled to inherit the property described in the Bill of Complaint and the Bill of Intervention and that the Petitioner did not have any right, title, claim or interest into said real estate. (R 16-19)

Thereafter, on July 25, 1966 the Petitioner perfected this Appeal to the Supreme Court of Alabama by filing Notice of Appeal and requesting the Court to enter an order fixing the amount of a supersedeas bond to supersede the decree of the Court which was entered on December 22, 1965. (R 159-163)

On March 8, 1966, a decree was entered by Judge Emmett F. Hildreth allowing the supersedeas bond and fixing the bond in the amount of Five Thousand and No/100 ($5,000.00) Dollars. (R 160)

On June 21, 1966, the Petitioner filed a supersedeas bond as surety for costs. (R 161) Thereafter, on June 22, 1966, Citation of Appeal was issued by the Circuit Court of Dallas County, Alabama summoning the Respondent Earline B. Brown to appear at the next Term of the Supreme Court of Alabama. (R 163).

The Honorable Emmett F. Hildreth who heard the case between the Petitioner Aldrich Jemison and the Respondents Ollie Mae Reeves, Ocie Alma Reeves and Willie Payr, is Judge of the Seventeenth Judicial Circuit of the State of Alabama and was appointed to hear said case by the Chief Justice of the Supreme Court of Alabama. (R 12-13) Dallas County is in the Fourth Judicial Circuit of the State of Alabama and Judge James A. Hare residing in Selma is one of the Judges of said Court. Judge Emmett F. Hildreth is presiding Judge of the Seventeenth Judicial Circuit of the State of Alabama and resides at Eutaw in Greene County, Alabama.

ARGUMENT

In opening, it should be pointed out to this Honorable Court that the Petitioner's entire basis for perfecting this Writ of Certiorari is that he is a Negro who was represented by a Negro Trial Counsel and that the Trial Judge who heard this case was biased against them because they were Negroes. However, it should be brought to the attention of this Honorable Court that all of the party litigants involved were of the Negro Race and it is the contention of the Respondents, upon whose behalf this Brief is filed, that there was ample evidence to sustain the findings of the Trial Court and that the Deeds which were procured from them were procured by fraud and undue influence exercised on them by the Petitioner and Petitioner's Trial Counsel.

As stated previously, the Respondents Ocie Alma Reeves, Ollie Mae Reeves and Willie Payr respectfully submit and deny that there was any denial to the Petitioner of any title, right, privilege or immunity under the Constitution of the United States. It should be pointed out to this Honorable Court that the Constitutional question (personal racial bias of Trial Judge) which is referred to in the Petitioner's Brief was not properly raised at the Trial Court level nor in the Supreme Court of Alabama. Neither the Trial Court nor the Supreme Court of Alabama ever had an opportunity to rule on this aspect of the case. While it is true that the Assignment of Errors did refer to the Fourteenth Amendment to the Constitution of the United States, there was no Assignment of Error that the Trial Judge who heard this cause was biased because of his personal racial bias against Petitioner and

Petitioner's Negro Trial Counsel. If these questions were to be properly presented, it would have been incumbent upon the Petitioner's attorney to assert this fact at the trial of the case and also bring this fact to the attention of the Supreme Court of Alabama. It is true that the Petitioner did file a Motion for Change of Venue (R 12). However, the question of racial bias of the Trial Judge was not raised in this Motion and the Motion is completely silent in this respect. It would seem to the writers of this Brief that if the Petitioner's Trial attorney was dissatisfied with the appointment of Judge Emmett F. Hildreth by the Chief Justice of the Supreme Court of Alabama, this fact should have been raised by a motion to have Judge Hildreth recuse himself from the case or by taking other appropriate remedies available to him under the Laws and Statutes of the State of Alabama. This was an Equity case and was properly brought in the County where the lands are situated and where the original Respondent Earline B. Brown resides. It is also to be noted that the original suit was filed by the Petitioner and the Petitioner and his Trial Counsel selected the forum. As it was stated by Judge Hildreth at the trial of this cause, he was somewhat confused as to what a change of venue would mean to the Petitioner, that he could hear the case in Dallas County as well as any other County. (R 58-59) It is to be kept in mind that this was an Equity case to be heard only by a Trial Judge and the cases pertaining to a change of venue where a jury is to decide the case are not applicable. If the Petitioner or his counsel were dissatisfied with the Trial Judge, a motion to require the Judge to recuse himself from the case should have been filed.

However, this was not done and the Trial Court presided over by Judge Emmett F. Hildreth was never presented with the contention of the Petitioner that he was biased against the Petitioner and his Trial Counsel because of his own personal racial bias. It should be pointed out to this Honorable Court that the Petitioner's own Trial Counsel stated at the hearing on this cause that he was perfectly satisfied with the Trial Judge and wanted the record to show that he was not charging that Judge Emmett F. Hildreth would not be fair and impartial (R 38-39).

The Respondents respectfully submit that this Court does not have jurisdiction as there was no right, title, privilege or immunity specifically set up or claimed under the Constitution of the United States and the question of any racial bias on the part of the Trial Judge was never presented to the Trial Court nor to the Supreme Court of Alabama. This being true, this Honorable Court has no choice except to refuse jurisdiction. *Deloach* v. *Rogers*, 268 F 2d 928; *Edelman* v. *People of State of Cal.*, 73 S. Ct. 293, 344 U. S. 357, 97 L. Ed 387; *Application of Baer*, 169 F 2d 770; *Lynch* v. *New York*, 293 U.S. 54, 55 S. Ct. 17; *Dept. of Mental Hygiene of Cal.* v. *Kirchner*, 85 S. Ct. 871, 380 U. S. 194, 13 L. Ed 753; *Hulbert* v. *City of Chicago*, 202 U. S. 275, 26 S. Ct. 617, 50 L. Ed 1206; *Mutual Life Insurance Co.* v. *McGrew*, 188 U. S. 291, 23 Supreme Court 375, 47 L. Ed 480; *Louisville R. R. Co.* v. *Woodford, Ky.*, 234 U. S. 46, 34 S. Ct. 739, 58 L. Ed 1202; *Mallers* v. *Commercial Loan Co.*, 216 U. S. 613, 30 Supreme Court 438, 54 L. Ed 638.

It was held in *Edelman* v. *People of the State of Cal.*, supra, that the Supreme Court is without power to de-

cide whether Constitutional rights have been violated and whether Federal questions were not seasonably raised in accordance with requirements of State Law. This case cited approvingly the case of *Hulbert* v. *City of Chicago,* supra and *Mutual Life Insurance Co.* v. *McGrew,* supra. It can be seen from these cases that this is a long standing rule of the Supreme Court.

The above cited cases clearly show that this Court has no choice except to deny jurisdiction of this case and deny the Petition for Writ of Certiorari. It was stated in the oft cited case of *Lynch* v. *New York,* supra, as follows:

> "It is essential to the jurisdiction of this Court in reviewing a decision of a Court of a State that it must appear affirmatively from the record, not only that a Federal question was presented for decision to the highest Court of the State having jurisdiction, but that its decision of the Federal question was necessary to the determination of the cause and that it was actually decided or that the judgment as rendered could not have been given without deciding it".

In the instant case, the record affirmatively shows that the Constitutional question raised by the Petitioner's counsel was not presented to the Trial Court nor to the Supreme Court of Alabama. In the case of *Louisville R. R. Co.* v. *Woodford, Ky.,* supra, this point was discussed by the Supreme Court of the United States. The Court stated as follows:

> "The decisions of this Court not only have repeatedly held that a Federal right in order to be reviewable here must be set up and denied in the

State Court, but have often held that such claim of denial is not properly brought to the attention of this Court whether it appears that the State Court declined to pass upon the question because it was not raised in the Trial Court, as required by the State practice." (Cases cited)

In the case at bar, there is no reason to believe that there was an attempt on the part of the Supreme Court of Alabama or on the part of the Trial Court to evade the decision of Federal questions, duly set up, by unwarranted resort to alleged rules under local practice.

It has long been the rule that the Alabama Supreme Court does not consider errors which have not been assigned or which have not been specifically and precisely raised in the Assignment of Error. *Congress of Industrial Organizations* v. *McAdory*, 65 S. Ct. 1395, 325, U. S. 472 89 L. Ed. 1741; *Ala. Chemical Co.* v. *Hall* 101 So. 456, 212 Ala. 8. Assignment of Error in Alabama which is uncertain and indefinite as to a particular error complained of will not be considered and the Assignment of Error should concisely and precisely state of what the error consists. *Provident Life and Accident Insurance Co.* v. *Priest* 103, So 678, 212 Ala. 576. Uncertain and indefinite assignments will not be considered. *Globe and Rudgers Fire Insurance Co.* v. *Jones*, 106 So. 172, 213 Ala. 656. An Assignment of Error which does not succinctly point out the error complained of with sufficient clearness and definiteness will not be considered in an appeal. *William E. Harden, Inc.* v. *Harden*, 29 Ala. A. 411, 197 So. 94. *Snellings* v. *Jones* 33 Ala. A. 301 33 So. 2d 371, certiorari denied 250 Ala. 89 33 So. 2d 373;

Bennich v. *Stewart* 34 Ala. A. 61 36, So. 599; *Taylor* v. *Taylor* 251 Ala 374 37 So. 2d 645.

It was incumbent upon the Petitioner to present to the Supreme Court of Alabama a clear and concise Assignment of Error stating in concise terms as to how the lower Court erred. In the case of *Myrick* v. *Carter*, 20 Ala. A. 616, 104 So. 559, the Court stated as follows:

> ". . . It rest upon the Appellant to present a record to this Court that clearly shows the ruling complained of, and in assigning error should state concisely in writing of what the error consists. Rule 1, S. Ct. This Court is not called upon to speculate or infer as to what was done or attempted by the Court below . . .".

There were only two Assignments of Error that mentioned the Fourteenth Amendment to the Constitution of the United States and these two Assignments of Error contended that Petitioner's rights guaranteed by the Fourteenth Amendment were violated by the Trial Court by receiving incompetent evidence. The question of the racial bias of the Trial Judge was not assigned as error to the Supreme Court of Alabama nor was it raised in the lower Court. In order for the question to have been properly presented to the Supreme Court of Alabama, the Trial Court should have first had the opportunity of ruling on the question and could not be put in error without making a ruling. The Assignments of Error above mentioned were not in compliance with Rule 1 of the Rules of the Supreme Court of Alabama nor were they in compliance with the decisions of the Supreme Court of Alabama.

The Petitioner in his Brief further relies on the fact that the Trial Court erred in not granting his motion to suppress the deposition which was taken of the Respondent Ocie Alma Reeves in New York City, New York on October 8th, 1965 because of alleged non-conformance with Equity Rule 55. The writers of this Brief see no basis for going into this fact as certainly, this has nothing to do with any privileges or immunities granted under the Fourteenth Amendment to the Constitution of the United States. Suffice it to say that the deposition was taken under Section 474 (1) et. seq. of Title 7, 1940 Ala. Code (1955 Cumulative Pocket Parts. Acts of Ala. No. 375) These sections were made applicable to Equity cases by Section 474 (19) (1963 Acts of Ala. 2d ex. session 323). The above Section pertaining to the taking of depositions was adopted by Alabama following the Federal Rules of Civil Procedure pertaining to the taking of depositions. Substantially, the Alabama Law pertaining to the taking of depositions is the same as the Federal Rules of Civil Procedure.

The Petitioner alleges that the Supreme Court of Alabama erroneously ruled that none of the Intervenors (Respondents Ollie Mae Reeves, Ocie Alma Reeves and Willie Payr) were named as parties to the Appeal, although the Appellant's Notice of the Appeal, Assignment of Errors and Appellant's Brief named them therein. Once again, the writers of this Brief could not see how this has any bearing on the Writ of Certiorari as it certainly cannot be claimed that this was a violation of the Petitioner's rights under the Constitution of the United States. The only rights of the Petitioner which were violated were his right to

Appeal to the Supreme Court of Alabama and this right was done away with by the action of his own counsel. It is specifically provided under Title 7, Section 801 of the 1940 Code of Alabama that a Citation of Appeal must be issued to the adverse party giving him Notice of the Appeal and must be served on him or his attorney at least ten (10) days before the date the Appeal is returnable. The Citation of Appeal was directed to only Earline B. Brown and none of the Respondents, upon whose behalf this Brief is filed, were named therein. (R 163). It is not sufficient to merely name a person as an Appellee in the Assignment of Errors or refer to them in a Brief as Appellee but a Citation of Appeal must be issued to them in accordance with the above referred to code section. This was not done and the Respondents herein were never parties to any proceedings in the Supreme Court of Alabama. *Clark* v. *Knox* 65 Ala. 401.

The decision of the Supreme Court of Alabama is correct and is not in conflict with any other decision or decisions of this Honorable Court. The provisions of Title 28, U. S. C. Section 1257 (3) are inapplicable to this case as the Petitioner has not set up any title, right, privilege or immunities claimed under the Constitution, treaties or statutes of the United States on his behalf.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

W. McLean Pitts

PITTS & PITTS
Attorneys at Law
Selma, Alabama
Attorneys for Respondents
OCIE ALMA REEVES
OLLIE MAE REEVES
WILLIE PAYR

CERTIFICATE

I, W. McLean Pitts, Attorney for Respondents, Ocie Alma Reeves, Ollie Mae Reeves and Willie Payr, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ..... day of December, A. D., 1967, I served copies of the foregoing Brief on the Petitioner, by mailing copies in a duly addressed envelope, with first class postage, prepaid, to his Attorney of Record, as follows:

CHARLES S. CONLEY
Attorney at Law
315 So. Bainbridge Street
Montgomery, Alabama 36104

W. McLEAN PITTS
PITTS AND PITTS
Attorneys at Law
Post Office Box 722
Selma, Alabama
Of Counsel for Respondents, Ocie Alma Reeves, Ollie Mae Reeves and Willie Payr.

APPENDIX

28 U. S. C. 1257:

"*State courts; appeal; certiorari.* Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

. . . (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948 c. 646, 62 Stat. 929."

Code of Alabama 1940, Rule 1, Rules of Supreme Court of Alabama:

"*Assignment of Errors and Joinder Therein.* In assigning errors, it shall be sufficient to state concisely, in writing, in what the error consists. Such assignments shall be written or typed upon transcript paper and bound with the transcript, and shall bear the certificate of the appellant, or his counsel, that a copy of the same has been served upon the appellee or his counsel. The words, "There is no error in the record," written or typed following the assignments of error, or contained in appellee's brief, shall be sufficient joinder in error."

Code of Alabama 1940, Title 7, Section 474 (19):

"*Application of article to suits in equity.* (1) In any equity suit in the state, whether such suit be pending at the time of the adoption of this section or be thereafter filed, any party may take the deposition of any person, including a party, by deposition upon oral examination for the purpose of discovery, or for use as evidence, in the suit, or for both purposes, in the manner, upon the terms and conditions prescribed by Act No. 375 of the legislature of Alabama of 1955, approved September 8, 1955 (Acts of Alabama of 1955, page 901 et seq.), hereinafter referred to as Act No. 375 (Sections 474 (1) 474 (18) of this title).

(2) The scope of the examination and cross-examination shall be the same as that provided for in Act No. 375."

Code of Alabama 1940, Title 7, Section 801:

"*Citation on appeal.* Upon an appeal being taken, the register or clerk of the circuit court, or the judge of probate, must issue a citation to the adverse party, returnable to the day to which the appeal is returnable, notifying him of the appeal, which must be served on him, or his attorney, or solicitor, at least ten days (unless otherwise provided) before the day to which the appeal is returnable."

IN THE

SUPREME COURT OF THE UNITED STATES

October Term

No. 822

ALDRICH JEMISON,

Petitioner,

versus

EARLINE B. BROWN,
OCIE ALMA REEVES,
OLLIE MAE REEVES,
and WILLIE PAYR,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ALABAMA

BRIEF FOR THE RESPONDENT
EARLINE B. BROWN IN OPPOSITION

Thomas G. Gayle
Attorney at Law
[illegible]

SUBJECT INDEX

Page

OPINION BELOW 1

JURISDICTION 2

QUESTIONS PRESENTED 3

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED 3

STATEMENT 4

ARGUMENT 10

CONCLUSION 17

CERTIFICATE OF SERVICE 17

APPENDIX 18

TABLE OF CASES CITED

Application of Baer, 169 F 2d 770 13

Ala. Chemical Co. v. *Hall* 101 So. 456, 212 Ala. 8 15

Bennich v. *Stewart* 34 Ala App 61, 36 So. 599 15

Congress of Industrial Organizations v. *McAdory* 65 S. Ct. 1395, 325 U. S. 472 89 L. Ed. 1741 15

Deloach v. *Rogers*, 268 F 2d 928 13

Department of Mental Hygiene of Cal. v. *Kirchner* 85 S. Ct. 871, 380 U. S. 194, 13 L. Ed 753 13

Edelman v. *People of State of Cal.* 73 S. Ct. 293 344 U. S. 357, 97 L. Ed 387 13

Globe and Rudgers Fire Insurance Co. v. *Jones* 106, So. 172, 213 Ala 656 15

Hulbert v. *City of Chicago* 202 U. S. 275, 26 S. Ct. 617 50 L. Ed 1206 13

Louisville R. R. Co. v. *Woodford, Ky.* 234 U. S. 46, 34 S. Ct. 739, 58 L. Ed. 1202 13

Lynch v. *New York*, 293 U. S. 54, 55 S. Ct. 17 13

Mutual Life Insurance Co. v. *McGrew* 188 U. S. 291, 23 S. Ct. 375, 47 L. Ed 480 13

Mallers v. *Commercial Loan Co.* 216 U. S. 613, 30 S. Ct. 438, 54 L. Ed 638 13

Myrick v. *Carter* 20 Ala. App 616, 104 So. 599 15

Provident Life and Accident Insurance Co. v. *Priest* 212 Ala. 576, 103 So. 678 15

Snellings v. *Jones* 33 Ala. App 301, 33 So. 2d 371, certiorari denied 250 Ala. 89, 33 So. 2d 373 15

Taylor v. *Taylor* 351 Ala. 374, 37 So. 2d 645 15

William E. Harden, Inc. v. *Harden*, 29 Ala. App 411, 197 So. 94 15

STATUTES AND CONSTITUTIONAL PROVISIONS

Title 28 U. S. C. 1257 (3) 18

Code of Alabama 1940—Rule 1, Rules of Supreme Court of Alabama 18

IN THE

SUPREME COURT OF THE UNITED STATES

October Term

No. 822

ALDRICH JEMISON,

Petitioner,

versus

EARLINE B. BROWN,
OCIE ALMA REEVES,
OLLIE MAE REEVES,
and WILLIE PAYR,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF FOR THE RESPONDENT EARLINE B. BROWN IN OPPOSITION.

OPINION BELOW

The opinion of the Supreme Court of Alabama in *Jemison* v. *Brown* is reported in ..... Ala. ....., 202 So. 2d 44 and is set forth in detail in Appendix B of Petitioner's Brief. The judgment of the Circuit Court of Dallas County, Alabama, in Equity, was entered on December 22nd, 1965 and is also found in Appendix B of the Petitioner's Brief.

JURISDICTION

The Respondent, Earline B. Brown denies that this Honorable Court has jurisdiction under 28 U. S. C. 1297 (3) because:

1. A Constitutional question which has been brought to the attention of this Honorable Court was not properly raised at the Trial Court level nor in the Supreme Court of the State of Alabama.

2. For it does not appear affirmatively from the record that a Federal question was presented for decision to the Supreme Court of Alabama and that the Federal question presented was necessary to the determination of the cause.

3. For that it does not affirmatively appear from the record that a Federal question was actually decided by the Supreme Court of Alabama or that the judgment or opinion of the Supreme Court of Alabama as rendered could not have been given without deciding a Federal question.

4. For that it affirmatively appears from the transcript of evidence that no Federal question was ever presented for decision to the Supreme Court of Alabama, nor that the basis of the decision of the Supreme Court of Alabama turned on a Federal question. The transcript of evidence clearly shows that the Supreme Court of Alabama based its entire decision upon the Statutes and Laws of the State of Alabama.

5. For that it does not affirmatively appear that the decision of the Supreme Court of Alabama turned on any Federal question or Constitutional right guaranteed to the Petitioner as this question was never pre-

sented to the Supreme Court of Alabama nor to the Trial Court.

QUESTIONS PRESENTED

As to the Respondent Earline B. Brown, the only questions presented are as follows:

1. Should this Court take jurisdiction under Title 28, U. S. C. 1257 (3) when the alleged denial of due process (personal racial bias of Trial Judge) as secured by the Constitution of the United States was not properly presented to the Trial Court nor to the Supreme Court of Alabama?

2. Whether or not this Honorable Court should take jurisdiction in this matter when it affirmatively shows that the Constitutional question involved was not raised at the Trial Court level nor presented to the Supreme Court of Alabama for decision?

3. Should this Court take jurisdiction of this cause when the Supreme Court of Alabama did not actually decide a Federal question and the judgment of the Supreme Court of Alabama as rendered was properly given without deciding a Federal question?

4. Whether or not there is any material fact shown in the transcript of evidence which shows that the Trial Judge rendered his decision on an unsubstantial allegation of fraud because of his personal racial bias against Petitioner and Petitioner's Negro Trial Counsel?

STATUTES AND REGULATIONS INVOLVED

The applicable statutes and regulations are provided in the Appendix, infra p.

STATEMENT

There are many inaccuracies found in "Petitioner's Statement" and it fails to state the true facts in first Trial held before Judge James A. Hare, and it is for this reason that the Respondent, Earline B. Brown makes the following statement of the case:

On April 2, 1965, the Petitioner filed a Bill of Complaint against the Respondent Earline B. Brown, in the Circuit Court of Dallas County, Alabama, in Equity. (R 2-3) In the Petitioner's Bill of Complaint it prayed for a sale and division of certain property which is located in Dallas County, Alabama. It alleged that the Petitioner, Aldrich Jemison, and the Respondent, Earline B. Brown, were joint tenants of this property and each owned a one-half undivided interest in the same. It further alleged that the Petitioner Aldrich Jemison derived his title from his mother Rachel Jemison who was a joint tenant with her husband, Scott Jemison. Rachel Jemison died intestate on or about July 24, 1948 and was survived by her son Aldrich Jemison and her husband Scott Jemison. The Respondent Earline B. Brown then married Scott Jemison and derived her one-half interest in the property by the Last Will and Testament of Scott Jemison. The Complaint further alleged that the property could not be equitably divided or partitioned and prayed that the Court enter an order selling the same. (R 2-3)

On April 19, 1965, the Respondent Earline B. Brown, through her attorney, T. G. Gayle (Thomas G. Gayle) of Selma, Alabama, filed an answer to the Bill of Complaint denying each and every allegation of the Bill of Complaint which was previously filed

and further stated that the Petitioner, Aldrich Jemison was not the son of Rachel and Scott Jemison and that he therefore did not have any interest in the said real estate. (R 3-4)

On May 25, 1965, a hearing on the petition for sale and division was had in the Circuit Court of Dallas County, Alabama, before the Honorable Judge James A. Hare, Judge of the Circuit Court of Dallas County, Alabama. (R 119-157) At said hearing, it was brought out by the evidence that Aldrich Jemison was not the son of Rachel Jemison as alleged in the Petitioner's Bill of Complaint and that the said Rachel Jemison left surviving her, her husband, Scott Jemison and her only child, one Mary Reeves. That Mary Reeves died intestate on or about to-wit: May 7, 1964 and left surviving her, three children, Ocie Alma Reeves, Ollie Mae Reeves and Willie Payr, who were the grandchildren of Rachel Jemison, deceased. (R 16; 118-157) At the conclusion of the hearing before the Honorable Judge James A. Hare, the attorney for the Petitioner stated that he would like to amend the Complaint to include the heirs of Mary Reeves, deceased. (R 156)

On July 9, 1965, the Petitioner filed a supplemental petition for additional relief and intervention, wherein he set forth that at the hearing which was held before Honorable James A. Hare, it was determined that the heirs at law of Rachel Jemison, deceased, were the three children of Mary Reeves, deceased, namely, viz: Ocie Alma Reeves, Ollie Mae Reeves and Willie Payr, and further stated that Aldrich Jemison was not the son of Rachel Jemison. He further set forth that the

interests of Ocie Alma Reeves, Ollie Mae Reeves and Willie Payr had been conveyed by Quitclaim Deeds to the Petitioner Aldrich Jemison and attached copies of said Quitclaim Deeds. (R 4, 5; 34, 67, 71)

He further stated in said petition that Aldrich Jemison should be allowed to intervene on the behalf of the rights of Ocie Alma Reeves, Ollie Mae Reeves and Willie Payr and that their interests in the real estate should be vested in him. (R 5)

On October 8, 1965, the Respondents Ocie Alma Reeves, Ollie Mae Reeves and Willie Payr, by and through their attorney of record Phillip Henry Pitts, filed a petition for leave to intervene in the cause of action and filed a Bill of Intervention. (R 6) In said Bill of Intervention, it set forth the fact that the Petitioner did not have any interests in the real estate in question and that the Intervenors had derived their title to said real estate from their mother Mary Reeves, deceased, who was the daughter and only child of one Rachel Jemison, deceased; it further set forth that at the time that Rachel Jemison died intestate, and at the time of her death she was a joint tenant with one, Scott Jemison and that her interests in the property upon her death went to her only child, Mary Reeves, deceased, who was the mother of your Intervenors. Said Bill of Intervention further set forth that the Intervenors had executed certain Quitclaim Deeds to the Petitioner, Aldrich Jemison wherein they conveyed their interest in said property to him. Said Bill of Intervention further alleged that at the time of the execution of said Deeds they did not have any knowledge of their interests in the hereinabove described real estate, nor did

they have any knowledge of the proceedings which were pending before the Circuit Court of Dallas County, Alabama, which were brought by the Petitioner Aldrich Jemison against the Respondent, Earline B. Brown. It was also alleged that said Petitioners were persons of a very limited education, had no business experience whatsoever and were not capable of taking care of themselves in an ordinary business transaction and that said Quitclaim Deeds were procured by the Petitioner Aldrich Jemison and his attorney, Charles S. Conley by fraud or undue influence. Said petition further alleged that said Deeds were executed upon representations which were false and which representations were conferred to the Intervenors by the Petitioner and his attorney. It further set forth that the Petitioner and his attorney knew that said lands were valued at approximately, to-wit: Twenty-two Thousand Dollars ($22,000.00), but yet the Respondents did not receive any consideration for executing said Deeds. Said Bill of Intervention prayed that the Bill be taken in the nature of a Cross-Bill and that the Petitioner be made a Cross-Respondent and that the Court enter an order or decree holding that the Deeds executed by the Intervenors be declared null and void. (R 6-9)

On October 8, 1965, notice was given by Judge James A. Hare of the Circuit Court of Dallas County, Alabama, to the said Aldrich Jemison that a Bill of Intervention had been filed. (R 10)

Subsequent thereto a motion to dismiss the Bill of Intervention was filed on the behalf of the Petitioner Aldrich Jemison. (R 10-11)

Also, a motion for a change of venue was filed by the Petitioner wherein it was alleged among other things that the Petitioner was of the belief that it was not possible to obtain a fair and impartial hearing on the merits of the case in the Circuit Court of Dallas County, Alabama. (R 12)

Thereafter, Judge James A. Hare of the Circuit Court of Dallas County, Alabama recused himself from said case and Honorabe Emmett F. Hildreth was appointed by the Honorable J. Ed. Livingston, Chief Justice of the Supreme Court of the State of Alabama, which said appointment was on November 5th, 1965. (R 12-13)

On December 22, 1965, a hearing on the Petitioner's Bill of Intervention was held in the Circuit Court of Dallas County, Alabama before the Honorable Emmett F. Hildreth. (R 21-118) At that time, the Petitioner's motion to dismiss was argued orally before the Court and the same was overruled. (R 15; 25-27) At that time, before a hearing on the merits was considered, an oral motion was made by the attorney who was representing the Intervenors under Title 46 Section 43 of the 1940 Code of Alabama (Recompiled 1958) which said motion was made for the purpose of having the attorney for the Petitioner show under what authority he was purporting to represent the Intervenors. (R 8) A hearing was held on said motion. (R 28-52) and the Court held that the firm of Pitts and Pitts had been employed by the Intervenors and that the said Intervenors had not employed the said Charles S. Conley, who is also the attorney for the Petitioner Aldrich Jemison. (R 15; 52) Said Court

also further found that the Petitioner's attorney Charles S. Conley could not have represented the Intervenors as the interest between the Petitioner Aldrich Jemison and the Respondents Ocie Alma Reeves, Ollie Mae Reeves and Willie Payr was in direct conflict. (R 15)

The attorney for the Petitioner Aldrich Jemison had also filed a motion for change of venue (R 12) and after a hearing was held on said motion, the Court overruled the same. (R 57-59)

At the conclusion of the evidence presented to Judge Emmett F. Hildreth, it was agreed by the attorneys representing the respective parties that the evidence which had been presented to Judge James A. Hare, at the hearing on the sale for division was considered part of the evidence and that the said Judge Emmett F. Hildreth would rule both on the original Bill of Complaint and the Bill of Intervention.

Thereafter, on July 25, 1966 the Petitioner perfected this Appeal to the Supreme Court of Alabama by filing Notice of Appeal and requesting the Court to enter an order fixing the amount of a supersedeas bond to supersede the decree of the Court which was entered on December 22, 1965. (R 159-163)

On March 8, 1966, a decree was entered by Judge Emmett F. Hildreth allowing the supersedeas bond and fixing the bond in the amount of Five Thousand and no/100 ($5,000.00) Dollars. (R 160)

On June 21, 1966, the Petitioner filed a supersedeas bond as surety for costs. (R 161) Thereafter, on June 22, 1966, Citation of Appeal was issued by the

Circuit Court of Dallas County, Alabama, summoning the Respondent Earline B. Brown to appear at the next Term of the Supreme Court of Alabama. (R 163)

The Honorable Emmett F. Hildreth who heard the case between the Petitioner Aldrich Jemison and the Respondents Ollie Mae Reeves, Ocie Alma Reeves and Willie Payr, is Judge of the Seventeenth Judicial Circuit of the State of Alabama and was appointed to hear said case by the Chief Justice of the Supreme Court of Alabama. (R 12-13) Dallas County is in the Fourth Judicial Circuit of the State of Alabama and Judge James A. Hare residing in Selma is one of the Judges of said Court. Judge Emmett F. Hildreth is presiding Judge of the Seventeenth Judicial Circuit of the State of Alabama, and resides at Eutaw in Greene County, Alabama.

ARGUMENT

In opening, it should be pointed out to this Honorable Court that the Petitioner's entire basis for perfecting this Writ of Certiorari is that he is a Negro who was represented by a Negro Trial Counsel and that the Trial Judge who heard this case was biased against them because they were Negroes. It should be brought to the attention of this Honorable Court that all of the party litigants involved were of the Negro Race and it is the contention of the Respondent, upon whose behalf this Brief is filed, that there was ample evidence to sustain the findings of the Trial Court.

It should be pointed out that the Petitioner had a right to mandamus Judge James A. Hare to give a decision at the original trial.

As stated previously, the Respondent Earline B. Brown respectfully submits and denies that there was any denial to the Petitioner of any title, right, privilege or immunity under the Constitution of the United States. It should be pointed out to this Honorable Court that the Constitutional question (personal racial bias of Trial Judge) which is referred to in the Petitioner's Brief was not properly raised at the Trial Court level nor in the Supreme Court of Alabama. Neither the Trial Court nor the Supreme Court of Alabama ever had an opportunity to rule on this aspect of the case. While it is true that the Assignment of Errors did refer to the Fourteenth Amendment to the Constitution of the United States, there was no Assignment of Error that the Trial Judge who heard this cause was biased because of his personal racial bias against Petitioner and Petitioner's Negro Trial Counsel. If these questions were to be properly presented, it would have been incumbent upon the Petitioner's attorney to assert this fact at the trial of the case and also bring this fact to the attention of the Supreme Court of Alabama. It is true that the Petitioner did file a Motion for Change of Venue (R 12). However, the question of racial bias of the Trial Judge was not raised in this Motion and the Motion is completely silent in this respect. It would seem to the writer of this Brief that if the Petitioner's Trial attorney was dissatisfied with the appointment of Judge Emmett F. Hildreth by the Chief Justice of the Supreme Court of Alabama, this fact should have been raised by a motion to have Judge Hildreth recuse himself from the case or by taking other appropriate remedies available to him under the Laws and Statutes of the State of Alabama. This was

an Equity case and was properly brought in the county where the lands are situated and where the original Respondent Earline B. Brown resides. It is also to be noted that the original suit was filed by the Petitioner and the Petitioner and his Trial Counsel selected the forum. As it was stated by Judge Hildreth at the trial of this cause, he was somewhat confused as to what a change of venue would mean to the Petitioner, that he could hear the case in Dallas County as well as any other County. (R 58-59) It is to be kept in mind that this was an Equity case to be heard only by a Trial Judge and the cases pertaining to a change of venue where a jury is to decide the case are not applicable. If the Petitioner or his counsel were dissatisfied with the Trial Judge, a motion to require the Judge to recuse himself from the case should have been filed. However, this was not done and the Trial Court presided over by Judge Emmett F. Hildreth was never presented with the contention of the Petitioner that he was biased against the Petitioner and his Trial Counsel because of his own personal racial bias. It should be pointed out to this Honorable Court that Petitioner's own Trial Counsel stated at the hearing on this cause that he was perfectly satisfied with the Trial Judge and wanted the record to show that he was not charging that Judge Emmett F. Hildreth would not be fair and impartial. (R 38-39)

The Respondent Earline B. Brown respectfully submits that this Court does not have jurisdiction as there was no right, title, privilege or immunity specifically set up or claimed under the Constitution of the United States and the question of any racial bias on the part of the Trial Judge was never presented to the Trial

Court nor to the Supreme Court of Alabama. This being true, this Honorable Court has no choice except to refuse jurisdiction. *Deloach* v *Rogers,* 268 F 2d 928; *Edelman* v. *People of State of Cal.,* 73 S. Ct. 293, 344 U. S. 357; 97 L. Ed 387; *Application of Baer* 169 F 2d 770; *Lynch* v. *New York,* 293 U. S. 54, 55 S. Ct. 17; *Dept. of Mental Hygiene of Cal.* v. *Kirchner,* 85 S. Ct. 871, 380 U. S. 194; 13 L. Ed 753; *Hulbert* v. *City of Chicago,* 202 U. S. 275, 26 S. Ct. 617, 50 L. Ed 1206; *Mutual Life Insurance Co.* v. *McGrew,* 188 U. S. 291, 23 Supreme Court 375, 47 L. Ed 480; *Louisville R. R. Co.* v. *Woodford, Ky.* 234 U. S. 46, 34 S. Ct. 739, 58 L. Ed 1202; *Mallers* v. *Commercial Loan Co.,* 216 U. S. 613, 30 Supreme Court 438, 54 L. Ed 638.

It was held in *Edelman* v. *People of the State of Cal.,* supra, that the Supreme Court is without power to decide whether Constitutional rights have been violated and whether Federal questions were not seasonably raised in accordance with requirements of State Law. This case cited approvingly the case of *Hulbert* v. *City of Chicago,* supra and *Mutual Life Insurance Co.* v. *McGrew,* supra. It can be seen from these cases that this is a long standing rule of the Supreme Court.

The above cited cases clearly show that this Court has no choice except to deny jurisdiction of this case and deny the Petition for Writ of Certiorari. It was stated in the oft cited case of *Lynch* v. *New York,* supra, as follows:

> "It is essential to the jurisdiction of this Court in reviewing a decision of a Court of a State that it

must appear affirmatively from the record, not only that a Federal question was presented for decision to the highest Court of the State having jurisdiction, but that its decision of the Federal question was necessary to the determination of the cause and that it was actually decided or that the judgment as rendered could not have been given without deciding it."

In the instant case, the record affirmatively shows that the Constitutional question raised by the Petitioner's counsel was not presented to the Trial Court nor to the Supreme Court of Alabama. In the case of *Louisville R. R. Co.* v. *Woodford, Ky.* supra, this point was discussed by the Supreme Court of the United States. The Court stated as follows:

"The decisions of this Court not only have repeatedly held that a Federal right in order to be reviewable here must be set up and denied in the State Court, but have often held that such claim of denial is not properly brought to the attention of this Court whether it appears that the State Court declined to pass upon the question because it was not raised in the Trial Court, as required by the State practice." (cases cited)

In the case at bar, there is no reason to believe that there was an attempt on the part of the Supreme Court of Alabama or on the part of the Trial Court to evade the decision of Federal questions, duly set up, by unwarranted resort to alleged rules under local practice.

It has long been the rule that the Alabama Supreme Court does not consider errors which have not been as-

signed or which have not been specifically and precisely raised in the Assignment of Error. *Congress of Industrial Organizations* v. *McAdory*, 65 S. Ct. 1395, 325 U. S. 472 89 L. Ed. 1741; *Ala. Chemical Co.* v. *Hall*, 101 So. 456, 212 Ala. 8, Assignment of Error in Alabama which is uncertain and indefinite as to a particular error complained of will not be considered and the Assignment of Error should concisely and precisely state of what the error consists. *Provident Life and Accident Insurance Co.* v. *Priest* 103 So. 678, 212 Ala. 576. Uncertain and indefinite assignments will not be considered. *Globe and Rudgers Fire Insurance Co.* v. *Jones*, 106 So. 172, 213 Ala. 656. An Assignment of Error which does not succinctly point out the error complained of with sufficient clearness and definiteness will not be considered in an appeal. *William E. Harden, Inc.* v. *Harden*, 29 Al. A. 411, 197 So. 94. *Snellings* v. *Jones* 33 Ala. A. 301 33 So. 2d 371, certiorari denied 250 Ala. 89 33 So. 2d 373; *Bennich* v. *Stewart* 34 Ala. A. 61 36, So. 599; *Taylor* v. *Taylor* 251 Ala. 374 37 So. 2d 645.

It was incumbent upon Petitioner to present to the Supreme Court of Alabama a clear and concise Assignment of Error stating in concise terms as to how the lower Court erred. In the case of *Myrick* v. *Carter*, 20 Ala. A 616, 104 So. 559, the Court stated as follows:

> "... It rest upon the Appellant to present a record to this Court that clearly shows the ruling complained of, and in assigning error should state concisely in writing of what the error consists. Rule 1, S. Ct. This Court is not called upon to speculate or

infer as to what was done or attempted by the Court below. . . ."

There were only two Assignments of Error that mentioned the Fourteenth Amendment to the Constitution of the United States and these two Assignments of Error contended that Petitioner's rights guaranteed by the Fourteenth Amendment were violated by the Trial Court by receiving incompetent evidence. The question of the racial bias of the Trial Judge was not assigned as error to the Supreme Court of Alabama nor was it raised in the lower Court. In order for the question to have been properly presented to the Supreme Court of Alabama, the Trial Court should have first had the opportunity of ruling on the question and could not be put in error without making a ruling. The Assignments of Error above mentioned were not in compliance with Rule 1 of the Rules of the Supreme Court of Alabama, nor were they in compliance with the decisions of the Supreme Court of Alabama.

The decision of the Supreme Court of Alabama is correct and is not in conflict with any other decision or decisions of this Honorable Court. The provisions of Title 28, U. S. C. Section 1257 (3) are inapplicable to this case as the Petitioner has not set up any title, right, privilege or immunities claimed under the Constitution, treaties or statutes of the United States on his behalf.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,
THOMAS G. GAYLE

Thomas G. Gayle
Attorney at Law
Selma, Alabama
Attorney for Respondent
Earline B. Brown

CERTIFICATE

I, T. G. Gayle (Thomas G. Gayle) attorney for Respondent, Earline B. Brown, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 11 day of December, A. D. 1967, I served copies of the foregoing Brief on the Petitioner, by mailing copies in a duly addressed envelope, with first class postage, prepaid, to his Attorney of Record, as follows:

CHARLES S. CONLEY
Attorney at Law
315 So. Bainbridge Street
Montgomery, Alabama 36104

THOMAS G. GAYLE
Attorney at Law
Post Office Box 592
Selma, Alabama
Of Counsel for Respondent,
Earline B. Brown.

APPENDIX

28 U. S. C. 1257 (3):

"*State Courts; appeal; certiorari,*. Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

. . . (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States, June 25, 1948 c. 646, 62 Stat. 929."

Code of Alabama 1940, Rule 1, Rules of Supreme Court of Alabama:

"*Assignment of Errors and Joinder Therein.* In assigning errors, it shall be sufficient to state concisely, in writing, in what the error consists. Such assignments shall be written or typed upon transcript paper and bound with the transcript, and shall bear the certificate of the appellant, or his counsel, that a copy of the same has been served upon the appellee or his counsel. The words, "There is no error in the record," written or typed following the assignments of error, or contained in appellee's brief, shall be sufficient joinder in error."